EASTERN DISTRICT OF TEXAS

CEDRIC NICKERSON,	§
Plaintiff,	8 8 8
versus	§ CIVIL ACTION NO. 1:09-CV-429
WARDEN SMITH, et al.,	8 8 8
Defendants.	§ §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Cedric Nickerson, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Warden Smith, Timothy Lester and Virgil Weaver.

The court previously referred this matter to the Honorable Keith F. GIblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The magistrate judge recommends this lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED.R.CIV.P. 72(b). After careful consideration, the court concludes the objections are without merit. Plaintiff asserts he does not have "three strikes" within the meaning of 28 U.S.C. § 1915(g) and should therefore not be barred from proceeding with this lawsuit on an *in forma pauperis* basis. However, the United States Court of Appeals for the Fifth Circuit has concluded plaintiff does have three strikes. *See Nickerson v. Price*, No. 09-40807 (5th Cir. Aug. 3, 2010). As a result, the court agrees that this case should be dismissed.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 24th day of May, 2012.

Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE